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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

229 W. 25TH STREET TENANTS' ASSOCIATION, Plaintiff and Respondent, v. TRUSTEE PROPERTIES, LLC, as Trustee, etc., Defendant and Appellant.	B205955 (Los Angeles County Super. Ct. No. BS112097)

APPEAL from an order of the Superior Court of Los Angeles County. David P. Yaffe, Judge. Affirmed.

Law Offices of Yevgeniya G. Lisitsa and Yevgeniya G. Lisitsa for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Mark S. Adams, in pro. per., as Amicus Curiae on behalf of Plaintiff and Respondent.

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In 2007, the City of Los Angeles Housing Department (LAHD) issued several notices of building code violations and orders to repair and comply with respect to a 20-unit apartment building (Building) owned by defendant Trustee Properties, LLC, as trustee of the 229 W. 25th Street Trust (Owner). Claiming the Building was substandard and in violation of code provisions, plaintiff 229 W. 25th Street Tenants' Association (Tenants Association) filed a petition for appointment of a receiver pursuant to Health and Safety Code section 17980.7, subdivision (c).[1] In January 2008, the trial court appointed a receiver, and Owner appealed. We affirm the order, rejecting Owner's contentions that the statutory notice requirements were not satisfied, that there was an improper delegation of factfinding authority to the receiver, that the evidence was insufficient, and that the unclean hands doctrine precluded relief to Tenants Association.

BACKGROUND

In February 2007, the gas company shut off the gas supply to the Building because of an inoperable gas heating system and LAHD issued notices of numerous building code violations and orders to eliminate the violations, which included the lack of a heating system, the lack of hot water, and other violations specific to individual apartments.

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[1] Unspecified statutory references are to the Health and Safety Code.

Section 17980.7 provides in pertinent part: "If the owner fails to comply within a reasonable time with the terms of the order or notice issued pursuant to Section 17980.6, the following provisions shall apply: [¶] . . . [¶] (c) The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision. In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3 . . . to all persons with a recorded interest in the real property upon which the substandard building exists. [¶] . . . [¶] (14) Nothing in this section shall be construed to deprive an owner of a substandard building of all procedural due process rights guaranteed by the California Constitution and the United States Constitution, including, but not limited to, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders which are issued by the enforcement agency or the court."

According to an LAHD work log, two notices of violations were posted in the Building on March 15, 2007: a February 21, 2007 notice and order of abatement (LAHD case No. 113597) and a February 28, 2007 notice and order to comply (LAHD case No. 121981). February 7 and 21, 2007 notices in LAHD case No. 113597 each listed over 100 violations, including electrical, heating and ventilation, and structural hazards, as well as the lack of hot water and heat; the notice in case No. 121981 addressed only the lack of gas for heat and hot water.

The notices and orders dated February 7, 21, and 28, 2007, each contained a "Proof of Mailing" showing that on the date of each notice, "the undersigned [LAHD employee] mailed this notice by regular mail, postage prepaid, to the person(s) listed on the last equalized assessment roll."

In a prior action related to the instant case, eight tenants filed a complaint in March 2007 for breach of the covenant of quiet enjoyment and breach of the warranty of habitability; Owner and the Building's management company cross-complained for breach of the contract to pay rent. (*Enciso v. Savvy Property Management* (L.A. Super. Ct. No. BC367152) (*Enciso* case).) The trial court in the *Enciso* case granted a preliminary injunction, requiring Owner to provide temporary relocation for the eight tenants on the ground that required work constituted "primary renovation work" so that the apartments could not be restored to habitability at the end of each day.

The *Enciso* case tenants also filed an administrative appeal of LAHD's March 2, 2007 approval of Owner's tenant habitability plan for emergency gas piping work. By June 2007, the tenants had hot water from a central hot water system, but there was no gas service to the apartments for cooking or heating. After a hearing on the administrative appeal in June 2007, the hearing officer found that the gas repiping work was of an urgent nature, the loss of gas for cooking made the apartments untenantable, and that Owner should provide temporary replacement housing within a two-mile radius with a provision for a meal allowance, or a per diem in lieu of temporary replacement housing. Between March and August 2007, the trial court in the *Enciso* case rejected several of Owner's temporary relocation plans for the tenants. On August 1, 2007,

LAHD issued another notice and order to comply in its case No. 113597, listing the same violations as in the February 21, 2007 order, as well as some new ones.

Thereafter, the relationship between Owner and numerous tenants further deteriorated from March to December 2007. Many tenants would not let Owner's repair people into their units to hook up gas lines to their heaters and stoves and to perform other repairs. The tenants claimed that Owner sent the repair people without the tenants' permission, failed to provide proper notice, and failed to offer temporary relocation housing.

On September 18, 2007, LAHD issued a letter of compliance, stating that an inspection of the Building was performed on *February 23, 2007*, which revealed that Owner had corrected the violations in the *February 28, 2007* notice and order to comply (LAHD case No. 121981). According to LAHD housing inspector Tim Hess, compliance letters are not standard procedure and are sent out only upon an owner's request.

Prior to this action, Tenants Association served Owner with a notice of petition for appointment of a receiver pursuant to section 17980.7, subdivision (c) (see fn. 1, *ante*), on November 5, 2007. In the notice of petition, Tenants Association asserted that Owner had not complied with five specific notices and orders to comply issued by LAHD and with the June 5, 2007 hearing officer's decision.

On or about November 21, 2007, Tenants Association filed a petition for appointment of a receiver and an ex parte application for issuance of an order to show cause (OSC) regarding appointment of a receiver. On November 21, 2007, the trial court issued an OSC, setting a hearing on the matter for December 17, 2007. But because of a temporary stay ordered in the *Enciso* case issued by the Court of Appeal on November 5, 2007 (*229 West 25th Street Trust v. Superior Court*, B203129), the trial court in the instant case on December 10, 2007, continued the hearing on the OSC to January 7, 2008. After the Court of Appeal in the *Enciso* case vacated the temporary stay on December 24, 2007, the OSC was scheduled for January 22, 2008.

On December 27, 2007, Owner was served with Tenants Association's renewed ex parte application for appointment of a receiver, a preliminary injunction, and other

relief. Exhibits to the application included all of the LAHD notices and orders from February 7, 2007, to August 1, 2007, pertaining to the Building, as well as numerous declarations from tenants. The tenants' declarations detailed numerous code violations that still existed in their apartments in December 2007, including the lack of gas and heat. According to Tenants Association consultant and former building inspector Anthony Weimholt, who inspected the Building, including six apartments in November 2007, the violations cited in the February 7, 21, 28, and August 1, 2007 notices and orders to comply contain nearly identical violations, and nearly all of the violations had not been corrected. And notwithstanding a two-day order to repair issued by LAHD on February 23, 2007, requiring Owner to restore gas facilities and provide heat and an adequate water supply, the tenants still had no gas service and no working heaters.

Owner filed opposition on December 27, 2007, January 10, 2008, and January 21, 2008. In its opposition, Owner asserted Tenants Association and its attorneys were obstructing Owner's efforts to make repairs in the Building. Owner also argued that a receiver could not be appointed on the basis of the lack of gas service and the violations in LAHD case No. 121981 because the February 23, 2007 two-day order to repair with respect to the lack of gas service was "cleared and closed" by LAHD and there was a letter of compliance issued as to the related February 28, 2007 notice and order to comply in case No. 121981.

But a City of Los Angeles inspector, Ernesto Corral, testified in a deposition that LAHD "closed" its two-day order to repair in April 2007 because the two-day order requires only that repairs be *commenced* within two days but not necessarily completed and Owner had taken out permits and was engaged in repair work. Corral also stated that the two-day order to repair was "not completely satisfied" because of an injunction issued in the *Enciso* case; nor could LAHD send out its own contractors to do the work because "we can't really start work there if there was an injunction against it."

Owner also submitted the December 9, 2007 and January 18, 2008 declarations of its property manager for the Building, Liz Mata. In her December 2007 declaration, Mata stated that on February 7 and 21, 2007, the City of Los Angeles ordered certain

repairs to the Building, that "virtually all of the repairs had been made," and that Owner's attempt to complete the repairs has been thwarted by the tenants. Mata declared in her January 18, 2008 declaration that, based on repairs made at the Building on January 17, 2008, a City of Los Angeles building inspector inspected the gas system and water heater installation; the Building passed inspection and the inspector signed off on the inspection. The inspector's approval stated, "Rough gas, final pressure test on gas, and water heater installation only okay. Final plumbing still to come."

In response to Owner's assertion that the Tenants Association had not complied with the notice requirements of section 17980.6, requiring posting of the orders or notices to repair, Tenants Association filed a proof of posting of the notices and orders to comply from February 7 to August 1, 2007, showing the foregoing notices and orders were posted in the lobby of the Building and on each apartment on January 7, 2008.[2] Tenants Association also argued that the posting provisions of section 17980.6 were not intended to benefit property owners and Owner had no due process challenge based on section 17980.6; even if the posting provisions were for Owner's benefit, there was substantial compliance with the statute in this case.

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[2] Section 17980.6 provides in pertinent part: "If any building is maintained in a manner that violates any provisions of this part . . . or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part. Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit. . . ."

Pursuant to subdivision (c) of section 17980.6, the notice shall include "[i]nformation that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code."

After a hearing on January 22, 2008, an order was filed on January 28, 2008, appointing a receiver and issuing a preliminary injunction. The order appointed Mark Adams as receiver and granted him specific duties. Among other things, the receiver was ordered to appraise the condition of the Building, to provide a report to the court and the parties, and to file a noticed motion for permission to conduct repairs before undertaking any repairs.

Owner appealed from the January 28, 2008 order.

DISCUSSION

Owner's brief submits four issues on appeal: (1) "Is the [trial court's] Order appointing a receiver void for want of jurisdiction (as the [trial court] acted in contravention of statute [sections 17980.6 and 17980.7])." (2) "Did the [trial court] improperly allocate its fact finding role to the receiver." (3) "Is there substantial evidence in support of the order appointing the receiver." (4) "Did the [trial court] err in not disabling the petition because of the [Tenant Association's] unclean hands."

1. Posting Requirement of Section 17980.6

In *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905 (*Gonzalez*), the court interpreted section 17980.6 and addressed the issue of whether the defendant owner and landlord may invoke the statutory requirement for posting in section 17980.6 as a basis for invalidating receivership orders. The court held that where the city provided notice to the owner, sufficient to satisfy due process principles, by personally serving him with a notice to repair, "the agency's failure to conspicuously post the same notice provides the owner no basis for relief." (*Gonzalez*, at p. 925.) With respect to the failure to provide notice to each affected unit and reference to the retaliation prohibition, the court held that these provisions were intended "for the informational benefit of tenants" and that the owner was "in no position to rely on them as a basis for invalidating the receivership orders." (*Id*. at p. 926.)

Here, there is substantial evidence of notice to Owner under section 17980.6, as two of the February 2007 notices were posted in the Building in March 2007. Owner does not dispute the March 2007 posting, nor does Owner claim lack of actual and timely

notice of the LAHD notices and orders. Indeed, the face of each notice and order to comply contains a proof of mailing stating that the notice was mailed to the persons listed on the last equalized assessment roll. Owner's property manager also admitted that she was aware of two of the February 2007 notices and orders to comply and that Owner had been attempting to make the required repairs pursuant to those notices.

And under *Gonzalez*, Owner cannot rely on any purported lack of timely posting on each tenant's unit as a ground to invalidate the order appointing the receiver. (43 Cal.4th at p. 926.) Owner thus fails to establish any basis for invalidating the instant order under section 17980.6.

Owner also fails to establish a basis for invalidating the order under section 17980.7. Owner's brief confuses the posting requirements of section 17980.6 with the requirement under section 17980.7, subdivision (c), that an owner be served with notice of a petition for appointment of a receiver not less than three days before filing the petition. (See fn. 1, *ante*.) Here, proof that such notice was given to Owner on November 5, 2007, appears at page 67 of the appellant's appendix.

As Owner fails to establish any defect with notice or posting, Owner's challenge to the order on purported jurisdictional grounds is without merit.

2. Delegation of Authority to Receiver

Pointing to comments made by the judge at the January 22, 2008 hearing that the receiver would survey the Building and tell the court "the truth about the status of this building, the status of the repairs, and [who was] preventing them from being completed," Owner asserts that the trial court improperly delegated to the receiver its factfinding role under sections 17980.6 and 17980.7 to determine whether violations existed and whether Owner was afforded a reasonable time to correct the violations.

The record belies Owner's argument. The trial court stated that the order appointing the receiver was based on "all of the [LAHD] orders that were made," indicating that the court determined that the violations set out in the LAHD orders existed and that at least some of the violations had not been corrected notwithstanding the reasonable time afforded Owner to correct the violations.

Nor is there any evidence that the trial court delegated to the receiver the task of determining the issue of whether Owner had an adequate and reasonable time to comply with the LAHD orders. The trial court's January 28, 2008 order does not mention that issue or grant to the receiver any authority with respect to that issue.

In related arguments, Owner complains that the trial court failed to articulate specific findings to support its order appointing the receiver and that the trial court violated Evidence Code section 500 by relieving Tenants Association of its burdens of proof and persuasion.

But we must infer that "the trial court impliedly made every factual finding necessary to support its decision." (*Fladeboe v. American Isuzu Motors, Inc*. (2007) 150 Cal.App.4th 42, 48; see also *Jespersen v. Zubiate-Beauchamp* (2003) 114 Cal.App.4th 624, 633 [judge's stray comments may not be used to impeach final order].) Accordingly, Owner fails to establish that the trial court improperly delegated factfinding authority to the receiver or relieved Tenants Association of its burden of proof.

3. Sufficiency of the Evidence

Owner claims that all LAHD orders to comply were "cleared and closed" — that is, the violations were corrected — before the filing of the tenants' action and thus cannot afford a basis for the appointment of a receiver. Substantial evidence supports the implied finding of the trial court that outstanding violations had not been corrected, notwithstanding a reasonable opportunity for Owner to do so. The trial court reasonably could have discounted the September 2007 letter of compliance regarding the February 28, 2007 notice to comply in LAHD case No. 121981 because some of the tenants and Weimholt provided declarations supporting the conclusion that numerous violations set out in the orders in LAHD case No. 113597 had not been corrected. And even if the trial court deemed the evidence to show that the two-day order to repair of February 23, 2007, was "cleared and closed," the February 23 order pertained only to LAHD case No. 121981. There was no evidence that orders in LAHD case No. 113597 were "cleared and closed."

Owner faults the trial court for considering a new notice and order to comply in case No. 113597, dated January 7, 2008, but there is no evidence that the trial court based its order on this new notice.

In sum, Owner fails to establish that the evidence was insufficient to support the order appointing the receiver.

4. Unclean Hands Doctrine

Owner argues that the tenants are "guilty of unclean hands in that they deprived the landlord of the safe harbor of [sections 17980.6 and 17980.7] by resisting repairs and then complained that the landlord had allowed the property to deteriorate unreasonably so" and that their conduct "should preclude any relief that they seek in this action."

In impliedly concluding that Owner had an adequate and reasonable time to correct the violations, the trial court necessarily rejected the unclean hands doctrine. Because substantial evidence supports the implied finding that Owner had an adequate and reasonable time to comply with the February 2007 LAHD orders, Owner's unclean hands argument also fails.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

FERNS, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.